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In the Supreme Court of the United States

OCTOBER TERM, 1961

TRUCK DRIVERS LOCAL UNION NO. 299, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AND GENERAL DRIVERS, WAREHOUSEMEN, HELPERS AND GAS STATION ATTENDANTS LOCAL UNION NO. 614, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, PETITIONERS

v.

ARTHUR J. GOLDBERG, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF FOR THE RESPONDENT IN OPPOSITION

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INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statutes involved	3
Statement	3
Argument	7
Conclusion	22
Appendix	23

CITATIONS

Cases:

Arthur J. Goldberg v. *International Brotherhood of Teamsters*, Misc. No. 22-61, D.C. D.C., October 5, 1961, now pending on appeal, C.A. D.C., No. 16,693	8
Chicago Board of Trade v. *Olsen*, 262 U.S. 1	21
Civil Aeronautics Board v. *Hermann*, 353 U.S. 322	18
Communist Party v. *Subversive Activities Control Board*, 367 U.S. 1	21
Endicott Johnson Corp. v. *Perkins*, 317 U.S. 501	16
Federal Trade Commission v. *Crafts*, 355 U.S. 9	18
Montship Lines Ltd. v. *Federal Maritime Board*, C.A. D.C., June 30, 1961	14, 15
Okla. Press Pub. Co. v. *Walling*, 327 U.S. 186	7, 15, 16, 17, 18
Rodgers v. *United States*, 138 F. 2d 992	18
Sunshine Coal Co. v. *Adkins*, 310 U.S. 381	21
United States v. *Darby*, 312 U.S. 100	21
United States v. *Morton Salt Co.*, 338 U.S. 632	7, 15, 17, 18
United States v. *White*, 322 U.S. 694	18
Wickard v. *Filburn*, 317 U.S. 111	21

Constitution and Statutes: Page

Constitution of the United States:
Article I, Section 8, clause 3 ..... 8, 19
Fourth Amendment 7, 15, 16
Fair Labor Standards Act of 1938, Section 11(a), 29 U.S.C. 211 15
Federal Trade Commission Act, Sections 9 and 10, 15 U.S.C. 49, 50 4
Labor-Management Reporting and Disclosure Act of 1959:
Section 2, 29 U.S.C. (Supp. I) 401 ..... 19, 20
Section 201, 29 U.S.C. (Supp. I) 431 ..... 3, 4, 14, 23
Section 206, 29 U.S.C. (Supp. I) 436 ..... 3, 14, 25
Section 601, 29 U.S.C. (Supp. I) 521 ..... 2, 3, 4, 5, 7, 9, 10, 12, 13, 15, 26

Miscellaneous:

105 Cong. Rec. 4618 (daily ed., March 25, 1959) 10
105 Cong. Rec. 14518-20 (daily ed., August 13, 1959) 9
H.R. 8400, 86th Cong., 1st Sess. 9, 10
H.R. 8342, 86th Cong., 1st Sess. 9
Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, published by the National Labor Relations Board (U.S. Govt. Printing Office, 1959) 10, 11, 12
S. 505, 86th Cong., 1st Sess. 10, 11
S. 1555, 86th Cong., 1st Sess. 10, 11, 12
S. Rept. No. 187, 86th Cong., 1st Sess. 11

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OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Michigan (R. 55a-63a,

Pet. App. 42a-52a) is unreported.[1] The opinion of the Court of Appeals (Pet. App. 1a-16a) is reported at 293 F. 2d 807. The order of the Court of Appeals denying a petition for rehearing (Pet. App. 18a) is unreported.

JURISDICTION

The judgment of the Court of Appeals (Pet. App. 1a) was entered on August 16, 1961. A timely petition for rehearing was denied on September 12, 1961 (Pet. App. 18a). The petition for a writ of certiorari was filed on October 14, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether, as a prerequisite to judicial enforcement of a subpoena *duces tecum* issued under the provisions of Section 601 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. (Supp. I) 521, the Secretary of Labor must establish probable cause or some similar basis for believing that the Act has been or is about to be violated.

2. Whether the reporting provisions of the Labor-Management Reporting and Disclosure Act of 1959 are unconstitutional as beyond the power of Congress under the Commerce Clause of the Constitution.

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[1] "R" references are to the appendix to the Secretary's brief in the Court of Appeals, filed as part of the record in this Court. "Pet. App." references are to the appendix to the petition for certiorari.

STATUTES INVOLVED

The reporting provisions of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. (Supp. I) 431, 436, and 521, are set forth in the Appendix, *infra*, pp. 23-26.

STATEMENT

This action resulted from the refusal of the petitioners to comply with certain subpoenas *duces tecum* issued by the Bureau of Labor-Management Reports, United States Department of Labor, and directed to the officers in charge of the petitioners' local unions. These subpoenas were issued pursuant to statutory authority given to the Secretary of Labor by Section 601 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. (Supp. I) 521. The background of the case may be summarized as follows:

Section 201 of the Reporting and Disclosure Act, *infra*, pp. 23-25, requires all unions subject to the provisions of the Act to file organizational and annual financial reports with the Secretary of Labor. Section 206, *infra*, pp. 25-26, provides that every person required to file these reports shall retain for a period of five years "records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Secretary may be verified, explained or clarified, and checked for accuracy and completeness * * *."

Section 601, *infra*, p. 26, confers authority upon the Secretary "when he believes it necessary in order to determine whether any person has violated or is about to violate" the reporting provisions "to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto." For this purpose, subsection (b) gives him the same subpoena power and sanctions accorded the Federal Trade Commission by Sections 9 and 10 of the Federal Trade Commission Act, 15 U.S.C. 49, 50.

Pursuant to Section 201, petitioners filed organizational reports in 1959 and financial reports in March and April 1960, the latter covering the period from January 1 to December 31, 1959.

On September 19, 1960, the subpoenas here involved were issued. The subpoena directed to the officer in charge of the records of petitioner Local 299 required him to appear before an authorized representative of the Secretary of Labor and to bring with him and produce all records from January 1, 1959, containing data on matters required to be reported by Section 201 (R. 7a, 8a). The subpoena recited that the data produced should be such that the organizational and financial reports filed by the union could be "verified, explained or clarified and checked for accuracy and completeness" (R. 7a, 8a). The subpoena expressly stated that its issuance was in connection with "an investigation by the Bureau of Labor-Management Reports involving a determination

whether any person has violated or is about to violate any provision of the Labor-Management Reporting and Disclosure Act of 1959" (R. 7a-8a). In effect, it called for the production of those books and records which, under Section 206, the union was required to keep available for five years after submitting the reports. The subpoena *duces tecum* directed to petitioner Local 614 (R. 9a) was in all material respects identical to the one directed to Local 299.

Thereafter, the officers in charge of petitioners' records appeared and declined "to comply with the terms and demands of the subpoena[s]" (R. 14a, 19a). They stated that this refusal was not based on a physical inability to produce the subpoenaed documents, but instead was for legal reasons (R. 14a, 19a).

Following these refusals, the Secretary of Labor, pursuant to the provisions of Section 601(b), *infra*, p. 26, filed a petition for enforcement in the district court. Following a hearing and the submission of briefs in which petitioners urged, *inter alia*, that the Secretary had failed to show probable cause to believe that a violation of the Act had been or was about to be committed (R. 50a), the district court denied the petition. While not expressly using the term "probable cause," the court held that the Secretary was required by Section 601 to show "some reasonable foundation" or "basis for this investigation", *i.e.* that he has reason "to believe [a] violation of law has been committed or contemplated" by petitioners. The district court also expressed the opinion that, if the statute were not so construed, it might result in an

infringement of the petitioners' rights under the Fourth Amendment to the Constitution (R. 58a-62a, Pet. App. 46a-50a).

The Court of Appeals for the Sixth Circuit reversed and remanded the cause with instruction to grant the petition for enforcement of the subpoenas (Pet. App. 17a). The Court of Appeals pointed out (Pet. App. 9a):

> The legislative history of the Act is clear that Congress rejected the "probable cause" requirement because it might hamper the Secretary in the performance of his duties with respect to investigation which were imposed upon him by the Act. With such a requirement, each investigation would likely be met by a lawsuit in which the Secretary would be obliged to prove a probable violation of the Act or enforcement of subpoenas would be denied. Even if successful in his proof, the investigation by the Secretary might be delayed for months or years while the matter was being litigated in the courts. It seems to us that the court ought not to impose a condition, which Congress rejected, on the exercise of the right of the Secretary to investigate. Nor do we see any real difference between the rejected "probable cause" requirement and that of a "reasonable basis" for the investigation adopted by the District Court. While the disclosure sought must not be unreasonable or oppressive * * * this does not mean that the Secretary is obligated to establish a reasonable basis for his investigation. If the Secretary was in possession of facts establishing a probable violation he might never need to investigate. The purpose of the investigation authorized by Con-

> gress was to provide the means of discovery whereby the Secretary could determine whether the Act was being violated, or about to be violated.

In this connection, the court relied upon this Court's decisions in *Oklahoma Press Pub. Co.* v. *Walling*, 327 U.S. 186, and *United States* v. *Morton Salt Co.*, 338 U.S. 632. Additionally, the court rejected petitioners' insistence that the reporting provisions of the Act are unconstitutional as beyond the power of Congress under the Commerce Clause.

ARGUMENT

The decision of the Court of Appeals is plainly correct. The terms and legislative history of Section 601 of the Labor-Management Reporting and Disclosure Act convincingly demonstrate that the Act does not require the Secretary of Labor to establish probable cause for believing the Act has been or is about to be violated—or something akin to it—prior to obtaining judicial enforcement of a subpoena *duces tecum* issued under the Act. The decisions of this Court leave no doubt that the Fourth Amendment does not impose such a requirement. Rather, both the Act and the Constitution leave the Secretary free to investigate whenever he believes it necessary in order to ascertain whether a statutory violation has occurred or is about to occur, and permit the subpoenaing of those documents which (like the books and records sought here) are required to be maintained. Moreover, there is clearly no merit to petitioners' argument that the Act is beyond the power of Congress

under the Commerce Clause of the Constitution. Accordingly, certiorari should be denied.[2]

1. In the district court, petitioners insisted that the subpoenas issued by the Secretary could not be enforced because there was no showing of "probable cause to believe that a violation of the Reporting and Disclosure Act has been or is about to be committed" (R. 50a). However, in the court of appeals (Br. pp. 2-4) and in their petition in this Court (Pet. 16-17), they have seemingly abandoned any reliance upon a probable cause requirement, as such. Instead, they now couch their argument in terms of an obligation on the part of the Secretary to show "the existence of a reasonable belief of the necessity for a particular investigation" (Pet. 16), or the "basis [on which he] selected any one particular labor union" (Pet. 18). Neither contention is valid.

a. If petitioners are suggesting that the Secretary must first have knowledge of facts indicating that the Act has been or is about to be violated before he can inspect a union's records as authorized by the Act, which seems to be another way of stating a requirement of probable cause, the answer is to be

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[2] It should be noted that the United States District Court for the District of Columbia has followed the Court of Appeals for the Sixth Circuit and ordered compliance with subpoenas virtually identical to those in the instant case. *Arthur J. Goldberg* v. *International Brotherhood of Teamsters, etc.*, Misc. No. 22-61, United States District Court for the District of Columbia, decided October 5, 1961, now pending on appeal in the United States Court of Appeals for the District of Columbia Circuit, No. 16,693.

found in the unambiguous statutory language and the legislative history.

Section 601, *infra*, p. 26, states that the Secretary shall have power "when he believes it necessary in order to determine whether any person has violated or is about to violate" the Act to make an investigation and inspect such records "as he may deem necessary." These words clearly commit the matter of the necessity of initiating and investigation to the judgment of the Secretary of Labor. All that the statute requires as a prerequisite is that the Secretary "believe it necessary" to investigate and inspect the records. The petitioners seek to insert into Section 601 restrictions upon the Secretary's investigatory authority which simply are not in the section as written by Congress.

Furthermore, the legislative history of the Act shows that Congress not only considered, but specifically rejected as being too restrictive, a requirement that the Secretary have probable cause for believing a violation of the Act has been or was about to be committed prior to the issuance of subpoenas under the investigatory powers granted by the statute.

H.R. 8400, 86th Cong., 1st Sess., the so-called Landrum-Griffin bill,[3] the major portions of which were incorporated in the Reporting and Disclosure Act of

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[3] The number of the bill finally passed by the House was H.R. 8342, but prior to passage, the text of H.R. 8400 was substituted. See 105 Cong. Rec. 14518-20 (daily ed., August 13, 1959).

1959, originally provided in Section 601(a) (*History*, p. 671):[4]

> The Secretary shall, *when he has probable cause to believe that any person has violated any provision of this Act*, other than a provision of title I, make an investigation, and in connection therewith he may inspect such records and accounts as may be necessary to enable him to determine the facts relative thereto. [Emphasis added.]

The original Kennedy-Ervin bill, S. 505, 86th Cong., 1st Sess., which was referred to the Senate Committee on Labor and Public Welfare, similarly provided in Section 106(c) (*History*, p. 45):

> The Secretary shall have the power and is directed, *when he has probable cause to believe that any person or labor organization has violated any provision of this title*, to make an investigation and in connection therewith he may enter such places and inspect such records and accounts as may be necessary to enable him to determine the facts relative thereto. * * * [Emphasis added.]

However, S. 1555, 86th Cong., 1st Sess.,[5] which was

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[4] The text of H.R. 8400, as well as of all of the other portions of the legislative history referred to in this brief is included in volumes I and II of the *Legislative History of the Labor-Management Reporting and Disclosure Act of 1959*, published by the National Labor Relations Board (United States Government Printing Office, 1959). Volume I covers pages 1-967 and Volume II, pages 968-1927. They will be cited as "*History*, p. ——".

[5] S. 1555, incorporating 46 Committee amendments to S. 505, was introduced by Senator Kennedy and referred to the Committee on Labor and Public Welfare on March 25, 1959. See 105 Cong. Rec. 4618 (daily ed., March 25, 1959).

finally reported to the Senate by that Committee, contained the following language in Section 106(c) with respect to the investigatory powers of the Secretary of Labor (*History*, p. 356):

> The Secretary shall have power and is directed *when he believes it necessary* in order to determine whether any person has violated or is about to violate any provision of this Act or any rule or regulation authorized by this Act (except amendments made by this Act to other statutes), to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto. * * * [Emphasis added.]

From this it can be seen that the bill as reported to the floor of the Senate, and as passed by the Senate, deleted the requirement of a showing of probable cause originally contained in S. 505, as referred to committee.

How this change came about is made clear in the statement of minority views which accompanied the Committee Report on S. 1555 (S. Rept. No. 187, 86th Cong., 1st Sess.). After a discussion of what it thought were shortcomings of S. 1555, the minority listed in Appendix A to their views certain amendments proposed by them which has been adopted by the Committee and inserted in that bill (S. Rept. No. 187, pp. 88, 91 (*History*, pp. 484, 487)). Concerning the deletion of the probable cause requirement, one of the minority recommendations adopted by the Committee, the minority report stated (p. 487):

> On the surface, the term "probable cause" would appear to give the Secretary all the investigatory power that he needed. But the words "probable cause" would throw a monkey wrench into the Secretary's investigatory machinery. Probable cause means more than mere suspicion that the act has been violated. To have probable cause, a person must have such evidence as would lead the ordinary prudent man to believe that the act has been violated. Consequently, every time he commenced an investigation the Secretary could be dragged into court until the question of probable cause had been decided. Under nearly every statute requiring the filing of reports, such as the Internal Revenue Act and the Fair Labor Standards Act, the Administrator can conduct "spot check" investigations unhampered by the "probable cause" requirement. Our amendment rewrites this section to give the Secretary investigatory power when he believes it necessary in order to determine whether a violation has occurred or is about to occur.

After it passed the Senate, S. 1555 was sent to a Conference Committee, and the Committee adopted the Senate version which did not contain the probable cause requirement (*History*, p. 940). The only change by the Conference Committee was that the investigation authority was made permissive rather than mandatory.

We submit that this legislative history conclusively demonstrates that Congress thought it had dispensed with the requirement of showing probable cause. And, as we have already seen, there is nothing in the terms of Section 601 which would preclude giving effect to

the plain legislative purpose. It cannot be maintained that the Secretary must make a preliminary showing of a "basis" for believing that the Act has been or is about to be violated, or any other showing that he possesses information which requires an inquiry into petitioners' compliance with the statute.

b. If the petitioners are disclaiming a requirement akin to probable cause, then the "reasonable basis" for requiring the particular records and information sought is patently disclosed—indeed, explicitly stated—on the face of the subpoena, which not only describe the records as those containing any basic "information or data on matters required to be reported", but further specify that the purpose was to verify particular reports, *i.e.*, information and data "from which the organizational report (Form LM-1), and the financial report (Form LM-2) filed with the Secretary of Labor * * * may be verified, explained or clarified and checked for accuracy and completeness, in connection with all items referred to or listed in such report and all items omitted or excluded therefrom which are relevant thereto and are required to be included in said reports * * *." (R. 8a, 9a-10a).

Petitioners could not have been informed in plainer terms that the purpose of the investigation was to determine whether they were violating or about to violate the statute, and they cannot suggest that this purpose was not an authorized one. Section 601 of the Act, in terms, (1) charges the Secretary with the responsibility of determining whether any person had violated or is about to violate any provision of the

statute, and (2) confers upon him the power, in connection with this determination, to make an investigation "when he believes it necessary." The Section also empowers him to require by subpoena the production of all documentary evidence relating to the matter under investigation. It is clear that, having fully apprised the petitioners and the district court that he sought the records in order to carry out his statutory obligation to determine whether a violation of the Act had occurred or was about to occur, the Secretary did all that the Act required of him.

The petitioners argue that the subpoenas were "so broad as to constitute a complete seizure of the books and records of the union" (Pet. 7). However, there can be no question as to the relevancy of the subpoenaed matter—in fact, it is difficult to see how the Secretary could make his determination without it. The "basic information and data" underlying these required reports are necessary to a determination of whether the records are complete and accurate (in compliance with Section 201 of the Act) and of whether the records have been retained (in compliance with Section 206 of the Act). The material called for was nothing more nor less than the records and books which the Act explicitly requires the petitioners to keep, and on the basis of which petitioners had submitted reports to the Secretary. Under these circumstances, it cannot be said that the subpoenas were too "broad" or that the Secretary was not acting "reasonably." [8]

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[8] The petitioners rely upon *Montship Lines, Ltd.* v. *Federal Maritime Board*, (Pet. App. 23a-11a), decided June 30, 1961,

2. It is not clear to what extent petitioners may be renewing their argument below that enforcement of the subpoenas would violate the Fourth Amendment. However, this Court's decisions in *Oklahoma Press Pub. Co.* v. *Walling*, 327 U.S. 186, and *United States* v. *Morton Salt Co.*, 338 U.S. 632, are dispositive of any contention based upon that Amendment.

Oklahoma Press concerned a subpoena *duces tecum* issued by the Wage and Hour Administrator pursuant to Section 11(a) of the Fair Labor Standards Act of 1938, 29 U.S.C. 211, which is similar to Section 601 of the Reporting and Disclosure Act. The subpoena was resisted on the ground that there was no showing of probable cause as to either coverage or violation of the Act, and that, consequently, the Administrator was on a "fishing expedition" forbidden by the Fourth Amendment. This Court held, however, that there

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by the Court of Appeals for the District of Columbia Circuit, for their argument that the subpoenas here were too broad. However, that case does not aid the petitioners, for there the court refused to enforce an order of the Federal Maritime Board on the sole ground that the agency had failed to specify any purpose for the investigation sought to be advanced by the production of the documents requested. In sharp distinction to *Montship*, the subpoenas in the instant case stated the purpose of the investigation. They said explicitly that the records and documents sought were required by the Secretary of Labor in the execution of his statutory duty to determine whether any person has violated or is about to violate any provisions of the Labor-Management Reporting and Disclosure Act. The subpoenas further stated that the records were required to verify and check for accuracy and completeness reports previously submitted by petitioners in accordance with the reporting provisions of the Act.

need be no such showing in order to satisfy the requirements of the Fourth Amendment (327 U.S. at 208-209):

> It is not necessary, as in the case of a warrant, that a specific charge or complaint of violation of law be pending or that the order be made pursuant to one. It is enough that the investigation be for a lawfully authorized purpose, within the power of Congress to command. This has been ruled most often perhaps in relation to grand jury investigations, but also frequently in respect to general or statistical investigations authorized by Congress. The requirement of "probable cause, supported by oath or affirmation," literally applicable in the case of a warrant, is satisfied in that of an order for production by the court's determination that the investigation is authorized by Congress, is for a purpose Congress can order, and the documents sought are relevant to the inquiry. * * *

Further, it was stated that an agency may perform an investigative function which is "essentially the same as the grand jury's, or the court's in issuing other pre-trial orders for the discovery of evidence, and is governed by the same limitations." Accordingly, the Court applied the rule it had previously laid down with respect to a grand jury investigation —that the inquiry must not be "limited * * * by the forecasts of the probable result of the investigation" (327 U.S. at 216).[7]

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[7] The *Oklahoma Press* holding was predictable in view of the Court's earlier holding in *Endicott Johnson Corp.* v. *Perkins*, 317 U.S. 501, that, under the Walsh-Healey Public

Other observations were made by this Court which are particularly pertinent to the enforcement of the Labor-Management Reporting and Disclosure Act by the Secretary of Labor (327 U.S. at 213):

> On the other hand, [the company's] view, if accepted, would stop much if not all of investigation in the public interest at the threshold of inquiry and, in the case of the Administrator, is designed avowedly to do so. This would render substantially impossible his effective discharge of the duties of investigation and enforcement which Congress has placed upon him. And if his functions could be thus blocked, so might many others of equal importance.

Four years later, in *United States* v. *Morton Salt Co.*, 338 U.S. 632, the Court reiterated its holding in *Oklahoma Press*. The Federal Trade Commission had ordered the company to cease specified practices and the district court ordered compliance with the order. The decree required periodic compliance reports by the company. The Commission subsequently ordered additional and highly particularized reports which were to include a complete statement of price, terms, and conditions of sale after a designated time. The company refused to submit the additional reports and its refusal was upheld by the district court and court of appeals. In this Court, the company argued that the Commission was engaged in a mere fishing expedition to see if it could turn up evidence of guilt.

Contracts Act, there need be no showing, to support a subpoena, that there was probable cause for believing the petitioner was within the coverage of the Act.

In the course of its opinion, the Court responded (338 U.S. at 641, 652):

> We will assume for the argument that this is so * * *.
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> * * * *
>
> * * * Even if one were to regard the request for information in this case as caused by nothing more than official curiosity, nevertheless, law-enforcement agencies have a legitimate right to satisfy themselves that corporate behavior is consistent with the law and public interest.

The Court also stressed that the administrative power of inquisition is "more analogous to the Grand Jury, which does not depend on a case or controversy for power to get evidence, but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not" (338 U.S. at 642-643).

In sum, the *Oklahoma Press* and *Morton Salt* cases have erased, as a constitutional matter, any probable cause or similar requirement in circumstances like those involved here. For subsequent decisions reaffirming those holdings, see *Civil Aeronautics Board* v. *Hermann*, 353 U.S. 322, and *Federal Trade Commission* v. *Crafts*, 355 U.S. 9.[8]

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[8] The petitioners attempt to distinguish the *Oklahoma Press* and *Morton Salt* cases on the ground that those cases involved corporations, whereas the unions here are unincorporated associations. However, in *United States* v. *White*, 322 U.S. 694, this Court rejected any such distinction; it is also clear that the *Oklahoma Press* and *Morton* rulings would apply to individual employers and individual businessmen. See also *Rodgers* v. *United States*, 138 F. 2d 992 (C.A. 6).

3. Petitioners insist that the reporting provisions of the Act represent an attempt by Congress to regulate internal union affairs unrelated to collective bargaining and that, since the Commerce Clause of the Constitution (Article I, Section 8, Clause 3) gives Congress no such power, the Act is unconstitutional. The basic premise of their argument is that regulation of internal union affairs has no, or at most only tangential, connection with the regulation of interstate commerce. The express findings of Congress, which were at the foundation of its enactment of the Reporting and Disclosure Act, completely refute any such assumption.

Section 2 of the Act, 29 U.S.C. (Supp. I) 401, is a Congressional declaration of the findings, purposes and policy upon which the Labor-Management Reporting and Disclosure Act is based. In Section 2(a), Congress found that "in the public interest, it continues to be the responsibility of the Federal Government to protect employees' rights," not only to "bargain collectively", but to "otherwise engage in concerted activities for their mutual aid or protection." Congress also noted that "the relations" generally, rather than merely collective bargaining, "between employers and labor organizations and the millions of workers they represent have a *substantial impact on the commerce* of the Nation." [Emphasis added]. It is then declared that "in order to accomplish the objective of a free flow of commerce * * * labor organizations" must "adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they